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10 October 1972

NOTE FOR JMM:

STATINTL

1. You asked me to look into and bring up at a staff meeting [REDACTED] proposal to amend CIARDS concerning the forfeiture of annuities for violation of a secrecy agreement.
2. There are valid arguments on both sides of the proposition and I've put some of them down in the attached for your consideration.
3. On balance, I think the arguments against the proposition outweigh those for the proposition but I am sure the ultimate decision will be based upon how much movement the Director and others want to see made on this subject.
4. In line with your interest for a staff discussion, I will raise this at our staff meeting tomorrow if we have time.

*h*  
LLM

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MEMORANDUM FOR THE RECORD

SUBJECT: Proposal for Annuity Forfeiture Upon Determination  
By the Director That a Participant Has Violated  
Secrecy Agreement

Arguments for the Proposal:

1. Policy. Policymakers want tighter laws to prevent unauthorized disclosures. Any related proposal, having reasonable survivability prospects in the legislative process, should be pushed.
2. Obligations of Law. Consistent with the Director's responsibility for "protecting intelligence sources and methods" he should take the lead in pushing any reasonable proposal giving him additional leverage in fulfilling that responsibility. Under current authority the Director can terminate an employee, but he has no comparable leverage once retirement benefits vest. Obviously, in any one case a retired employee can do just as much or more damage to intelligence sources and methods.
3. Statutory Precedent. Statutory precedent exists: 5USCA 8311 to 8313 and P. L. 88-643, section 234(a).
4. Minimum Repercussions. The proposition involving as it does an amendment to the 1964 CIA Retirement Act is unlikely to prompt floor amendments aimed at the Director's authorities in the 1947 and 1949 Acts.
5. Court Decisions. The proposition is a logical statutory extension of the Marchetti case decision by denying benefits to one who has breached a condition of employment.
6. Congressional Climate. The 93rd Congress may be so constituted that it will present an unique opportunity for obtaining favorable action on this or similar proposals.

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Arguments Against the Proposal:

1. Public Reaction. Regardless of its merits, the proposition will most likely generate strong public reaction that the Agency and/or the Administration is applying the screws to CIA employees for a number of nefarious reasons, e. g., to avoid embarrassment to Administration policies, to attempt to influence the judgment of the objectivity and integrity of CIA employees, etc.
2. History. The legislative precedent for the proposition was born in a period of American history which many people still view with emotion. This will tend to support misunderstanding of the proposition regardless of its merit.
3. Limited Effect. The CIA Retirement Act applies to only one-third of the work force. The other two-thirds are also exposed to highly sensitive information and are signatories to secrecy agreements, but would not be subject to the proposed sanctions (an interesting side effect of this disparity is to provide further support for extending the CIA Retirement Act to all employees).
4. Lack of Specific Precedent. The general law which applies to all Federal staff retirement systems, including CIA's, provides for the forfeiture of retirement benefits for, among other things, a conviction arising out of "disclosure of classified information". The proposal provides for such forfeiture on a unilateral determination by the Director. The obvious point is why is existing law not sufficient and what justifies resort to administrative fiat.
5. Due Process--Justiciability. In the 93rd Congress we will be facing Senator Ervin and others who apparently have sincere difficulty in appreciating why we are placed at a disadvantage in court cases. Clearly, since the proposal does not provide for appeal and is not on its face justiciable, we should expect a strong fight from Senator Ervin and others.
6. General Applicability. If the proposition has validity, it should apply to all Federal employees who sign secrecy agreements and should, therefore, conform to the process and other requirements that now appear in the comparable sections of Title 5. It should apply to all Federal staff retirement systems.

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7. Half a Loaf. The principal purpose to be served by the proposal is to deter the unauthorized disclosure of classified information. Yet it has only limited application. If we are going to step in the breach, weather the storm of public/congressional reaction, and use up our credit in a number of our Hill accounts, shouldn't we go all out and attempt to get an enactment such as the intelligence data proposal, which is going to be worth the price.



STATINTL

Assistant Legislative Counsel

Distribution:

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